

[PART I.] GENERAL PROVISIONS**Note**

Sections 78-1 to 51 designated as Part I by L 1989, c 63, §4.

Part heading repealed July 1, 2002. L 2000, c 253, §79.

§78-1 Citizenship and residence of government officials and employees; exceptions. *[Section effective until June 30, 2002. For section effective July 1, 2002, see below.]* (a) All elective officers in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or in the service of any county or municipal subdivision of the State who are employed as department heads, first assistants, first deputies, second assistants, or second deputies to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment; however, all others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointed pursuant to this section shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All employees in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their application for employment.

"Resident" means a person who is physically present in the State at the time the person claims to have established the person's domicile in the State and shows the person's intent is to make Hawaii the person's permanent residence. In determining this intent, the following factors shall be considered:

- (1) Maintenance of a domicile or permanent place of residence in the State;
- (2) Absence of residency in another state.

(d) For the purpose of obtaining services which are essential to the public interest for which no competent person with the qualifications under subsection (c) applies within forty-five days after the first public notice of the position or a notice of an examination therefor, which notice has been given more than once, and not more often than once a week, statewide, a person without the qualifications, upon prior certification by the state director of human resources development or the personnel director of the appropriate county, and with the approval of the chief executive officer for the State or the political subdivision concerned, may be employed.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

(f) A preference shall be granted to state residents who have filed resident income tax returns within the State or who have been claimed as a dependent on such a return at the time of their application for employment with the State or any county or municipal subdivision of the State.

For residents applying for positions covered by chapters 76 and 77, the preference shall be accomplished as provided in section 76-23.

For residents applying for positions not covered by chapters 76 and 77, the preference shall be accomplished by

giving first consideration to such residents, if all other factors are relatively equal.

(g) This section shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11. [L 1909, c 32, §1; am L 1923, c 19, §1; RL 1935, §86; am L 1935, c 211, §1; am L 1939, c 216, §§1, 2; RL 1945, §451; am L 1949, c 190, §§1, 2; am L 1951, c 319, §3; RL 1955, §5-1; am L 1961, c 82, §1; am L 1965, c 170, §1 and c 175, §1; am L 1967, c 5, §1 and c 220, §1; HRS §78-1; am L 1969, c 206, §1; am L 1970, c 36, §1; am L 1976, c 162, §1; am L 1977, c 211, §1; am L 1978, c 101, §1; am L 1980, c 250, §1; gen ch 1985; am L 1987, c 295, §2; am L 1994, c 56, §21; am L 1998, c 2, §25 and c 115, §11]

§78-1 Citizenship and residence; exceptions. (a) All elective officers in the service of the government of the State or any county shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or any county who are employed as department heads and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment. All others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All persons seeking employment with the government of the State or in the service of any county shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and residents of the State at the time of their application for employment and as a condition of eligibility for continued employment.

"Resident" means a person who is physically present in the State at the time the person claims to have established the person's domicile in the State and shows the person's intent is to make Hawaii the person's permanent residence. In determining this intent, the following factors shall be considered:

- (1) Maintenance of a domicile or permanent place of residence in the State;
- (2) Absence of residency in another state; and
- (3) Former residency in the State.

(d) The appointing authority may approve the appointment of persons without consideration of the requirements under subsection (c) when services essential to the public interest require highly specialized technical and scientific skills or knowledge for critical-to-fill and labor shortage positions.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

(f) This section shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11. [L 1909, c 32, §1; am L 1923, c 19, §1; RL 1935, §86; am L 1935, c 211, §1; am L 1939, c 216, §§1, 2; RL 1945, §451; am L 1949, c 190, §§1, 2; am L 1951, c 319, §3; RL 1955, §5-1; am L 1961, c 82, §1; am L 1965, c 170, §1 and c 175, §1; am L 1967, c 5, §1 and c 220, §1; HRS §78-1; am L 1969, c 206, §1; am L 1970, c 36, §1; am L 1976, c 162, §1; am L 1977, c 211, §1; am L 1978, c 101, §1; am L 1980, c 250, §1; gen ch 1985; am L 1987, c 295, §2; am L 1994, c 56, §21; am L 1998, c 2, §25 and c 115, §11; am L 2000, c 253, §75]

Cross References

Constitutional provisions on residency, see Const. Art. V, §6.

Attorney General Opinions

Residency of president of University of Hawaii. Att. Gen. Op. 61-84.

A noncitizen may be given a probationary appointment to a state civil service position provided that all prescribed conditions are met. Att. Gen. Op. 66-21.

Promotion of a nonresident appointee following completion of probationary period. Att. Gen. Op. 66-22.

The superintendent of education's position is exempt from the three-year residency law. Att. Gen. Op. 66-27.

Law Journals and Reviews

The New Resident: Hawaii's Second-Class Citizen. 5 HBJ 77.

Case Notes

Durational residency requirement for public employment violated equal protection clause of 14th Amendment. 443 F. Supp. 228.

As to alien employment under former laws. See 5 H. 167.

Durational residence requirement, set forth in prior law, did not have a rational relation to public employment and violated the equal protection clause of the U.S. Constitution. 53 H. 557, 498 P.2d 644.